

DJF:SSD

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MICHAEL F. DERICHIE, Individually	:	
and as Administrator of the Estate of	:	
SARAH E. DERICHIE,	:	
Plaintiff	:	No.
	:	
v.	:	Civil Action
	:	
UNITED STATES OF AMERICA,	:	
WAYNE MEMORIAL HEALTH	:	
SYSTEM, INC., GEISINGER CLINIC	:	
d/b/a GEISINGER VIEWMONT	:	
IMAGING, MARK M. SKEVOFILAX,	:	
GERALD N. LARAR, GEISINGER	:	
CLINIC d/b/a GEISINGER WYOMING	:	
VALLEY MEDICAL CENTER,	:	
DARREN L. JACOBS, MARK A.	:	
LACEY, HEATHER R. PADUCK, :	:	
DOUGLAS C. NATHANSON, GLORIA :	:	
A. POMBO, and GEISINGER HEALTH :	:	
SYSTEM FOUNDATION,	:	
Defendants	:	

NOTICE OF REMOVAL OF CIVIL ACTION

David J. Freed, United States Attorney for the Middle District of Pennsylvania, by Samuel S. Dalke, Assistant U.S. Attorney, on behalf of defendant, United States of America, hereby gives notice of the removal of the above-captioned matter from the Court of Common Pleas for Lackawanna County, Pennsylvania, to this Court, pursuant to the Federally Supported Health Centers Assistance Act, 42 U.S.C. § 233 (“FSHCAA”), and states as follows:

1. On or about May 1, 2019, plaintiff Michael F. DeRichie, Individually and as Administrator of the Estate of Sarah E. DeRichie, deceased (“Plaintiff”), filed a medical malpractice complaint in the Court of Common Pleas for Lackawanna County, Pennsylvania, No. 2019-cv-0298 (the “State Action”) against defendants Wayne Memorial Community Health Centers d/b/a Carbondale Family Health Center, Kenneth J. Bannon and Richard K. Hacker (the “Federal Defendants”), and also against defendants Wayne Memorial Health System, Inc., Geisinger Clinic d/b/a Geisinger Viewmont Imaging, Mark M. Skevofilax, Gerald N. Larar, Geisinger Clinic d/b/a Geisinger Wyoming Valley Medical Center, Darren L. Jacobs, Mark A. Lacey, Heather R. Paruck, Douglas C. Nathanson, Gloria A. Pombo, and Geisinger Health System Foundation (collectively, along with the Federal Defendants, the “Defendants”). See Complaint, Exhibit A hereto.

2. Plaintiff asserts claims for negligence, wrongful death and survival against the Defendants for allegedly failing to timely diagnose and treat Sarah DeRichie’s brain tumor between December 2014 and her death on May 1, 2017. Id.

3. Pursuant to FSHCAA, 42 U.S.C. § 233(g)-(n), the United States Department of Health and Human Services has deemed the three Federal Defendants—Wayne Memorial Community Health Centers d/b/a Carbondale Family Health Center and its employees Kenneth J. Bannon, M.D. and Richard K. Hacker, PA-C—covered employees of the United States for purposes of the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671, *et seq.*, as result of their work as Public

Health Service employees, including for the period relevant to the Complaint, December 1, 2014 to May 1, 2017. See Declaration of Meredith Torres, Exhibit B hereto and the Deeming Letters attached thereto.

4. The FSHCAA extends FTCA coverage to the grantees that have been deemed covered under Section 233(h) and certain of its officers, employees, and contractors. See 42 U.S.C. § 233. Here, all three Federal Defendants are covered. See Declaration, Exhibit B hereto, including the attached Deeming Letters.

5. Upon certification “that the defendant [employee] was acting within the scope of his employment at the time of the incident out of which the suit arose,” the State Action “shall be removed without bond at any time before trial” to the Middle District of Pennsylvania. 42 U.S.C. § 233(c).

6. Joseph J. Terz, Chief, Civil Division, United States Attorney's Office, has certified that the three Federal Defendants were acting within the scope of their employment with the United States at all times relevant to the incidents underlying Plaintiff's lawsuit. See Certification attached hereto as Exhibit C.¹

7. Moreover, upon removal, this action against the Federal Defendants shall be “deemed a tort action brought against the United States under the provisions of title 28[, i.e. the FTCA].” 42 U.S.C. § 233(c); see also Feaster v. Federal Bureau

¹ The Attorney General has delegated certification authority to the United States Attorneys. 28 C.F.R. § 15.3. In turn, the United States Attorney for the Middle District of Pennsylvania has delegated certification authority to the Chief of the Civil Division, United States Attorney's Office.

of Prisons, 366 F. App'x 322, 323 (3d Cir. 2010) (“The only proper defendant in an FTCA suit is the United States itself.”); Zierke v. United States, 3:CV-14-0350, 2016 WL 1189399, at *4 (M.D.Pa. Mar. 22, 2016) (“All actions brought pursuant to the FTCA must be brought against the United States of America and not in the name of the allegedly negligent agency, entity or employee. The only proper party in an FTCA action is the United States of America.”) (citations omitted).

8. As result, the State Action is one which the United States may properly remove to federal court and automatically substitute itself as the proper defendant (in place of the Federal Defendants) pursuant to 42 U.S.C. § 233.

9. Notice of Removal of this action will be provided to the Prothonotary of the Court of Common Pleas of Lackawanna County on the next business day, July 11, 2019.

WHEREFORE, the United States of America respectfully gives notice that the above-captioned matter is removed to the United States District Court for the Middle District of Pennsylvania, and that the United States is substituted as the defendant in place of Wayne Memorial Community Health Centers d/b/a Carbondale Family Health Center, Kenneth J. Bannon and Richard K. Hacker.

Respectfully submitted,

DAVID J. FREED
United States Attorney

s/ Samuel S. Dalke
SAMUEL S. DALKE
Assistant U.S. Attorney
PA Bar No. 311803
228 Walnut Street, 2nd Floor
P.O. Box 11754
Harrisburg, PA 17108-1754
Tel: (717) 221-4482
Fax: (717) 221-4493
samuel.s.dalke@usdoj.gov

Date: July 10, 2019

DJF:SSD

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MICHAEL F. DERICHIE, Individually	:	
and as Administrator of the Estate of	:	
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DOUGLAS C. NATHANSON, GLORIA :	:	
A. POMBO, and GEISINGER HEALTH :	:	
SYSTEM FOUNDATION,	:	
Defendants	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania, is a person of such age and discretion as to be competent to serve papers, and on this 10th day of July 2019, he served a copy of the foregoing

NOTICE OF REMOVAL OF CIVIL ACTION

by e-mail and by placing a copy in a postpaid envelope addressed to the persons

hereinafter named, at the places and addresses stated below, which is the last known addresses, and by depositing said envelopes and contents in the United States Mail at Harrisburg, Pennsylvania:

Malcom L. MacGregor
McDonald & MacGregor, LLC
538 Spruce Street, Suite 320
Scranton, PA 18503
Counsel for Plaintiff

Raymond E. Ginn
Bruce L. Vickery
Ginn & Vickery, P.C.
99 Main Street
Wellsboro, PA 16901
Counsel for Wayne Memorial Health System, Inc. and Wayne Memorial Community Health Centers

Matthew P. Keris
Robert J. Aldrich
Marshall Dennehey, Warner, Coleman & Groggin, P.C.
50 Glenmaura National Boulevard
Moosic, PA 18507
Counsel for Richard K. Hacker and Kenneth J. Bannon

Cindy S. Serge
Geisinger System Services, Legal Department
660 Baltimore Drive, Suite 125
Wilkes Barre, PA 18702
Counsel for the Geisinger entities

Eugene P. Feeney
Noah E. Katz
Weber, Gallagher, Simpson, Stapleton, Fires & Newby LLP
201 Penn Avenue, Suite 400
Scranton, PA 18503
Counsel for Mark M. Skevofilax

James A. Doherty, Jr.
Grace Doherty Hillebrand
Scanlon, Howley & Doherty, PC
217 Wyoming Avenue
Scranton, PA 18503
Counsel for Gerald N. Larar

Paul J. Wylam
The Perry Law Firm, LLC
305 Linden Street
Scranton, PA 18503
Counsel for Darren L. Jacobs, Mark A. Lacey, and Heather R. Paduck

Charles Eppolito, III
Laura E. Hutchinson
White and Williams LLP
1650 Market Street, Suite 1800
Philadelphia, PA 19103
Counsel for Douglas C. Nathanson and Gloria A. Pombo

/s/ Samuel S. Dalke
SAMUEL S. DALKE
Assistant U.S. Attorney